

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

NOTICE

May 21, 1997

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62, STATS.

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

No. 96-1536

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT II**

**JOAN A. LANG, INDIVIDUALLY
AND AS SPECIAL ADMINISTRATOR OF THE
ESTATE OF JAMES M. LANG,**

PLAINTIFF-RESPONDENT,

V.

ALLSTATE INSURANCE COMPANY,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Washington County: LAWRENCE F. WADDICK, Judge. *Reversed.*

Before Snyder, P.J., Nettesheim and Anderson, JJ.

PER CURIAM. Allstate Insurance Company appeals from a judgment in favor of Joan A. Lang individually and as special administrator of the Estate of James M. Lang, her deceased husband, finding underinsured motorist coverage under the Lang family's automobile insurance policy for an accident in

which James was killed. Because we conclude that Allstate does not owe such coverage to Lang, we reverse.

At the time of the accident, the tortfeasor had bodily injury liability limits of \$100,000. Also at that time, Lang and her husband were insured by Allstate for two vehicles and had underinsured motorist coverage limits of \$100,000 for bodily injury. Lang obtained a judgment against the tortfeasor in the amount of \$232,277 and against the tortfeasor's insurer for the \$100,000 limits of that policy. Thereafter, Lang sought to recover against Allstate on the underinsured motorist provisions of the Lang family's policy and to stack the underinsured motorist coverage on the two Lang vehicles. The parties cross-moved for summary judgment. The trial court granted Lang's motion for summary judgment after concluding that Allstate owed underinsured motorist coverage. The trial court then stacked the underinsured motorist coverages and awarded Lang a judgment of approximately \$200,000. Allstate appeals.

On cross-motions for summary judgment, both parties waive trial and seek a ruling on the legal issue. See *Schunk v. Brown*, 156 Wis.2d 793, 796, 457 N.W.2d 571, 572 (Ct. App. 1990). We review decisions on summary judgment by applying the same methodology as the trial court. See *M & I First Nat'l Bank v. Episcopal Homes Management, Inc.*, 195 Wis.2d 485, 496, 536 N.W.2d 175, 182 (Ct. App. 1995); see also § 802.08(2), STATS. We independently examine the record to determine whether the moving party is entitled to judgment as a matter of law. *Streff v. Town of Delafield*, 190 Wis.2d 348, 353, 526 N.W.2d 822, 824 (Ct. App. 1994).

Whether Allstate owes Lang underinsured motorist coverage requires interpretation of the policy's language. This presents a question of law

which we decide independently of the trial court. See *Smith v. Atlantic Mut. Ins. Co.*, 155 Wis.2d 808, 810, 456 N.W.2d 597, 598 (1990). To the extent the policy's language is plain and unambiguous, it is dispositive on the coverage question. See *Allstate Ins. Co. v. Gifford*, 178 Wis.2d 341, 346, 504 N.W.2d 370, 372 (Ct. App. 1993). When assessing whether an insured is entitled to underinsured motorist coverage, we start with the policy's definition of such coverage. Only if the policy definition is satisfied is there coverage under the policy. See *id.*

An amendatory endorsement to Part V, Uninsured Motorist Insurance, defines "an uninsured auto" as "an uninsured motor vehicle which has bodily injury liability protection in effect and applicable at the time of the accident, but less than the applicable limit of Uninsured Motorists Coverage shown on the declarations page."

It is undisputed that the bodily injury limits on the Lang policy were \$100,000 per person. This is the same bodily injury limit afforded by the tortfeasor's insurance. Therefore, under the Allstate definition, the underinsured motorist coverage of its policy does not apply and Allstate is not liable to Lang for underinsured motorist coverage. See *Smith*, 155 Wis.2d at 811, 456 N.W.2d at 599. The trial court failed to employ the analysis set forth in *Smith* and *Matthiesen v. Continental Cas. Co.*, 193 Wis.2d 192, 199, 532 N.W.2d 729, 732 (1995), which first requires a determination as to whether an insured is entitled to underinsured motorist coverage under the policy definition. Here, Lang was not so entitled and the trial court erred in concluding otherwise.

Lang argues that the Allstate policy is ambiguous because the declarations page distinguishes between underinsured and uninsured motorist

coverage while the body of the policy and the endorsement do not define “underinsured.” We disagree. Even though underinsured motorist coverage is cataloged under “uninsured motorist,” the policy clearly states when such coverage applies. Lang’s interpretation of the contract is unacceptably strained.

By the Court.—Judgment reversed.

This opinion will not be published. *See* RULE 809.23(1)(b)5, STATS.

